

**ROCKY MOUNTAIN CHRISTIAN CHURCH
MEMORANDUM OF AGREEMENT FOR PUBLIC IMPROVEMENTS**

THIS AGREEMENT is made and entered this ____ day of _____, 2009, by and between the TOWN of Frederick, a Colorado municipal corporation, whose address is P.O. Box 435, Frederick, Colorado ("TOWN"), and Rocky Mountain Christian Church, a Colorado non-profit corporation _____, whose address is 9447 Niwot Road, Longmont, CO, 80503 ("DEVELOPER").

WHEREAS, DEVELOPER has submitted a Site Plan for Lot 2, Block 2 of the Russell Subdivision ("DEVELOPMENT"), attached as "Exhibit A" and incorporated herein by reference; and

WHEREAS, the subdivision regulations of the TOWN requires that the DEVELOPER enter into a Subdivision Agreement hereafter called a Memorandum of Agreement for Public Improvements ("AGREEMENT" or "MOAPI") with the TOWN concerning public improvements related to the Development detailed and attached as the "Schedule of Improvements, Exhibit B," hereinafter called "Exhibit B" and incorporated herein by reference; and

WHEREAS, the parties have modified this standard AGREEMENT as indicated by the addition of certain special provisions, if any, in Exhibit F; and

WHEREAS, the TOWN and the DEVELOPER agree that such public improvements are directly related to and generated by development intended to occur within the SUBDIVISION and that no taking thereby will occur requiring any compensation.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto promise, covenant and agree as follows:

1. GENERAL CONDITIONS.

1.1 Definitions:

- a.) Accept:** The Town accepts public improvements after they have been constructed and inspected. Conditional Acceptance and Final Acceptance are the times when the warranty period begins and when the warranty period ends. Conditional and Final Acceptance by the Town must be in writing to be valid, as described in Sections 1.4 and 1.6.
- b.) Approve:** The Town will review and approve construction plans and the general design of engineered structures to ensure that they are in compliance with the Town's Design Standards and Construction Specifications.

However, the Town does not design these structures and any failure due to faulty engineering is the liability of the design engineer who stamped the plans.

c.) **Major Improvements:** Streets, including curb, gutter and sidewalk, and concrete structures that are built in place, such as detention pond outlet structures and box culverts.

1.2 **Development Obligation.** DEVELOPER shall be responsible for performance of the covenants set forth herein. DEVELOPER agrees to construct, build, install and develop all improvements required by this AGREEMENT, including but not limited to all water system improvements, sanitary sewer collection lines, sanitary sewer lift stations, storm sewer lines and catch basins, storm drainage swales, storm drainage detention ponds and other improvements, streets, curbs, gutter, sidewalks, landscaping, pedestrian and non-motorized paths and trails, street median/boulevard and subdivision entryway landscaping, park improvements, irrigation systems, gas services, electric services, telephone services, cable television services and any other improvements constructed in relation to the development of the Rocky Mountain Christian Church in complete conformity with the TOWN's construction standards and specifications and with the construction plans and drawings that have been reviewed and Approved by the TOWN.

1.3 **Engineering and Surveying Services.** DEVELOPER agrees to furnish, at its expense, all necessary engineering and surveying services relating to the design and construction of the Development and the public improvements identified in "Exhibit B," attached and incorporated herein by this reference. The engineering services shall be performed by or under the supervision of a Registered Professional Engineer licensed by the State of Colorado in accordance with the applicable Colorado law; and except as otherwise provided in this AGREEMENT, shall conform to the standards and specifications for public improvements as established and approved by the TOWN as of the date of submittal to the TOWN.

The surveying services shall be performed by or under the supervision of a Registered Land Surveyor, licensed by the State of Colorado in accordance with the applicable Colorado law and shall include, but not be limited to, the monumentation of the subdivision as provided by law.

1.4 **Construction Standards.** DEVELOPER shall construct all improvements required by this AGREEMENT, according to plans and specifications reviewed and accepted in writing by the TOWN or by the utility providing the service, and with the approved plat, and in full conformity with the TOWN's construction specifications applicable at the time of construction plan acceptance. Such

acceptance shall continue in effect for three (3) years from the date of acceptance. If the DEVELOPER commences or performs any construction after such three (3) year period, the DEVELOPER shall resubmit the project construction plans to the TOWN for reexamination. The TOWN may require the DEVELOPER to comply with the TOWN standards and specifications that are in effect at the time of resubmittal.

- 1.5 **Development Coordination.** Unless specifically provided in this AGREEMENT to the contrary, all submittals to the TOWN shall be made to the TOWN Clerk with a copy to the TOWN's Engineer, as may be designated by the TOWN. The TOWN's Engineer, or the Engineer's designee shall render those acceptances required of the TOWN in connection with this AGREEMENT, except those requiring formal action by the Board of Trustees in the form of a resolution or ordinance, and shall have general responsibility for coordinating development with DEVELOPER.

1.6 **Plan Submission and Acceptance.**

- (a) DEVELOPER shall furnish the TOWN complete plans for public improvements for the Development, and obtain written acceptance of such plans by the TOWN before the commencement of any construction work thereon. DEVELOPER shall submit all sanitary sewer plans to and shall acquire the written acceptance by the St. Vrain Sanitation District before the commencement of any construction work on such improvements. Approval shall be indicated by the signature of the appropriate district representative on each drawing in the plans set containing sanitary sewer and storm drainage facilities.
- (b) The TOWN shall issue its written acceptance or disapproval of public improvement plans as expeditiously as reasonably possible. Said acceptance or disapproval shall be based upon the standards and specifications for public improvements as established by the TOWN, and the TOWN shall notify DEVELOPER of all deficiencies that must be corrected before plan acceptance. All deficiencies shall be corrected and DEVELOPER shall resubmit the plans for review and acceptance by the TOWN before the construction of any improvements.
- (c) DEVELOPER shall submit all plans for public improvements as paper documents and by acceptable electronic transfer, AutoCAD™ drawing files (release 14, or newer). All written documents shall be submitted as paper documents and by acceptable electronic transfer, as word processing files, Microsoft Word, latest version, or compatible.

- (d) Amendments to the approved plans shall be submitted to the TOWN for review and approval in the same manner as for the original plans. Approval of amendments shall be in writing.
- (e) The DEVELOPER shall cause to be furnished to the Town Engineer a construction schedule for the proposed public improvements and obtain his written approval for such schedule at least five (5) days prior to the commencement of construction work. The construction schedule shall be updated each month until conditional acceptance of the construction is given. The construction schedule shall be provided to the Town Engineer electronically, in Microsoft Project Manager, or a similar program.

1.7 Incorporation by Reference.

All plans, special provisions, proposals, specifications and contracts for the public improvements furnished and let pursuant to this AGREEMENT shall be and hereby are made a part of this AGREEMENT by reference as fully as if set out herein in full.

1.8 Conditional Acceptance of Constructed Public Improvements.

- (a) No later than fourteen (14) days after public improvements are completed for each phase or for the entirety of the Development, DEVELOPER shall request inspection by the TOWN. If DEVELOPER does not request this inspection within fourteen (14) days of completion of improvements, the TOWN may conduct the inspection without the approval of DEVELOPER.
- (b) If improvements completed by DEVELOPER are in substantial compliance with the approved public improvement plans, the TOWN shall grant "conditional acceptance," which shall be subject to "final acceptance" as set forth herein. The TOWN shall provide notice of conditional acceptance in writing.
- (c) If improvements completed by DEVELOPER are not in substantial compliance with the approved public improvement plans, the TOWN shall provide written notice to DEVELOPER of the repairs, replacements, construction or other work required to receive "conditional acceptance." DEVELOPER shall complete all needed repairs, replacements, construction or other work within thirty (30) days of said notice, weather permitting. After DEVELOPER completes the repairs, replacements, construction, or other work required, DEVELOPER shall request of the

TOWN a reinspection of such work to decide if TOWN can grant "conditional acceptance." The TOWN reserves the right to schedule reinspections, depending upon scope of deficiencies. The TOWN shall provide written notice to DEVELOPER as to whether or not the work is acceptable before the TOWN acts to complete any such work at DEVELOPER's expense as provided in (d) below.

- (d) If DEVELOPER has not completed the improvements on or before the completion dates set forth in "Exhibit B" herein, or if DEVELOPER does not complete the repairs, replacements, construction or other work required within thirty (30) of said notice, the TOWN may exercise its rights to secure performance as provided in Section 14.1 of this AGREEMENT.
- (e) DEVELOPER shall provide a certified statement of construction costs no later than forty-five (45) days after improvements are completed.
- (f) The DEVELOPER shall provide the Town Engineer certified Record Plan Transparencies on Black Image Diazo Reverse Mylars (as-built) plans and other required drawings upon completion of the construction of public improvements, and other documents as required by the TOWN no later than forty-five (45) days after improvements are completed. These documents shall show "as-built" locations and design details of such improvements. In addition, "as-built" plans and other required drawings for public improvements shall be submitted by acceptable electronic transfer, AutoCAD™ drawing files (release 14, or later). Failure to provide the required as-built drawings may result in the suspension of development activities by the TOWN including, but not limited to, the issuance of building permits and certificates of occupancy.
- (g) The TOWN shall issue no building permit for the construction of any structure until all the water lines, fire hydrants, sanitary sewer lines (if required), storm sewer facilities (including storm sewers, catch basins and stormwater detention ponds) and streets (including the curb, gutter and sidewalk, and the street with at least the asphalt base course completed) serving such structure have been completed and granted conditional acceptance.
- (h) The above requirements also apply to sewer and water improvements to be inspected and accepted by the appropriate Special District. The DEVELOPER shall obtain conditional acceptance of the improvements in writing and provide a copy of the same to the TOWN.

1.9 Maintenance and Warranty of Improvements. For a two (2) year period from the date of conditional acceptance of any improvements related to the Development, DEVELOPER shall warrant said improvements and, at its own expense, take all actions necessary to maintain said improvements and make all needed repairs or replacements that, in the reasonable opinion of the TOWN, shall become necessary. If within thirty (30) days after DEVELOPER's receipt of written notice from the TOWN requesting replacement or repairs to the public improvements, the DEVELOPER has not completed such repairs, the TOWN may exercise its rights to secure performance as provided in Section 14.1 of this AGREEMENT.

1.10 Final Acceptance.

- (a) At least thirty (30) days before two (2) years have elapsed from the issuance of conditional acceptance, or as soon thereafter as weather permits, DEVELOPER shall request a "final acceptance" inspection. The TOWN shall inspect the improvements and shall notify the DEVELOPER in writing of all deficiencies and necessary repairs, if any.
- (b) If there are no deficiencies, and after clear title to on-site and off-site right-of-ways and easements have been transferred to the Town by plat dedication or general or special Warranty Deed, and after all licenses and permits necessary for the development of the SUBDIVISION and obtained by the DEVELOPER have been transferred to the TOWN, the TOWN shall accept streets, right-of-ways and other public ways, easements, open spaces, parks and other lands dedicated on the plat and accept public improvements constructed by the DEVELOPER for ownership and maintenance by the TOWN and shall issue to the DEVELOPER a letter acknowledging said final acceptance.
- (c) If there are deficiencies of the public improvements, the TOWN shall provide a written notice identifying the deficiencies and DEVELOPER shall correct all deficiencies at DEVELOPER's expense. Deficiencies of improvements that are considered in the sole opinion of the Town Engineer to be Major Improvements as defined in Section 1.1(c) shall be subjected to an additional two year warranty period and shall not be granted final acceptance following the DEVELOPER's correction of the deficiencies. In the event that the warranty period is extended by an additional two years, the letter of credit or other improvement guarantee provided by the DEVELOPER shall be reevaluated for sufficiency by the TOWN, and the guarantee must be extended such that it does not expire during any additional warranty period. Corrections to improvements that are not Major Improvements shall be eligible for final acceptance at the

end of the initial two-year warranty period and shall not be subject to an additional warranty period.

- (d) If DEVELOPER does not correct all deficiencies and make repairs identified in the "final acceptance" inspection to the TOWN's satisfaction within thirty (30) days after receipt of said notice, weather permitting, the TOWN may exercise its rights to secure performance as is provided in Section 14.1 of this AGREEMENT.
- (e) If any mechanic's liens have been filed with respect to the public improvements, the TOWN may retain all or part of the Improvement Guarantee up to the amount of such liens until said liens have been released by the claimant or discharged by judicial action.
- (f) If DEVELOPER fails to submit the improvements for the "final acceptance" inspection and obtain the Town's acceptance of the public improvements within two (2) years of the date of the issuance of conditional acceptance, or if any improvements are found not to conform to this AGREEMENT or to applicable TOWN standards and specifications, then the warranty period shall extend on a month to month basis and DEVELOPER shall be in default of the AGREEMENT and the TOWN may exercise its rights under Section 14.1 of this AGREEMENT.
- (g) The above requirements shall also apply to the sewer and water improvements to be inspected and accepted by the appropriate Special District. The DEVELOPER shall obtain the final acceptance of the improvements in writing and provide a copy of the same to the TOWN.

1.11 Testing and Inspection.

- (a) DEVELOPER shall employ, at its own expense, a licensed and registered testing company, authorized to do business in the State of Colorado, to do all testing of materials or construction that the TOWN may reasonably require, including but not limited to compaction testing for embankment fills, structural backfills, pipe bedding, trench backfills, subgrade, road base course and asphalt, and concrete strength testing, and shall furnish copies of test results to the TOWN on a timely basis for TOWN review and acceptance before commencement or continuation of construction to which the testing is applicable. DEVELOPER shall repair or remove all materials and work not conforming to such regulations, plans and specifications and replace the same at DEVELOPER's expense to conform to such regulations, plans and specifications.

- (b) At all times during construction of the public improvements the TOWN and/or representatives of the affected Special Districts shall have access to inspect the materials and workmanship of said construction, determine the progress of the work, and determine compliance of the work with the accepted plans and the TOWN's and Districts' construction regulations. The TOWN Engineer or District's Engineer shall be present to inspect the pressure leakage testing of potable water lines conducted by the DEVELOPER. The Town may collect and deliver a water sample to Weld County Health Department for bacteriological tests of the potable water lines after the DEVELOPER has disinfected said lines according to the TOWN's or District's construction regulations, or the Town may require that the DEVELOPER shall employ, at the DEVELOPER's expense, a testing laboratory acceptable to the TOWN or District to conduct said bacteriological tests.
- (c) All work shown on the accepted public improvement plans shall be subject to inspection by the TOWN Engineer. Inspection by the TOWN Engineer shall not relieve the DEVELOPER from compliance with the accepted plans and specifications or the TOWN's construction regulations. Inspection services requiring the presence of the TOWN Engineer are provided Monday through Friday, except legal holidays, from 9:00 a.m. to 4:00 p.m. During the hours listed above, inspections shall be scheduled a minimum of seventy-two (72) hours in advance with the TOWN Engineer. Requests for inspection services beyond the hours listed above, shall be submitted a minimum of seventy-two (72) hours in advance to the TOWN Engineer for approval. All requests for after-hours inspection services shall be made in writing to the TOWN Engineer. If TOWN approves the request, the DEVELOPER shall reimburse the TOWN for all direct costs of the after-hours inspection services. If TOWN denies the request, the work shall not continue after the time requested until an inspection has been done during the hours listed above. The DEVELOPER shall comply with all notification and inspection requirements of the St. Vrain Sanitation District regarding sanitary sewer improvements.
- (d) The Developer shall pay the Town for all costs incurred by the Town in the performance of the above said services within ten (10) days of the Town submitting an invoice for said services. Failure by the Developer to pay within the specified time shall be cause for the Town to deny future building permits and/or order cessation of all activities on the DEVELOPMENT.

1.12 Financing and Improvement Guarantees.

- (a) Except as otherwise specifically agreed herein, the DEVELOPER agrees to install and pay for all improvements described in "Exhibit B" or otherwise required by this MOAPI as shown on the accepted plat, landscape plans, utility plans, construction drawings, and other accepted documents on file with the TOWN.
- (b) DEVELOPER shall submit to the TOWN an Improvement Guarantee for all public improvements related to the Development. The term of the guarantee shall be for a time sufficient to cover the completion of construction of the public improvements and the warranty period through final acceptance; in no case shall the term of the guarantee be for fewer than two years. The guarantee may be in cash, certified check, or a letter of credit in form and substance as shown on "Exhibit C" attached hereto and incorporated herein by reference. The guarantee shall be subject to approval by the Town Attorney. The guarantee, if a letter of credit, shall not expire during the winter season (November 1- April 30). The Improvement Guarantee shall include, but not be limited to, all water system improvements, sanitary sewer collection lines, sanitary sewer lift stations, storm sewer lines and catch basins, storm drainage swales, storm drainage detention ponds and other improvements, streets, curbs, gutter, sidewalks, landscaping, pedestrian and non-motorized paths and trails, street median, boulevard and subdivision entryway landscaping, park improvements, irrigation systems, gas services, electric services, telephone services, cable television services and any other improvements constructed in relation to the development of Rocky Mountain Christian Church as described by Exhibit B or by Exhibit F.
- (c) The total amount of the guarantee shall be calculated as 10 percent (10 %) of the total estimated cost including labor and materials of all public improvements to be constructed as described on "Exhibit B," except those public utilities to be owned by an entity other than the TOWN and for which a separate surety is provided. TOWN shall not release The Improvement Guarantee until the TOWN has granted final acceptance of the improvements. The costs established in "Exhibit B" shall be reviewed and approved by the Town Engineer.
- (d) If DEVELOPER has not submitted or fails to maintain the Improvement Guarantee, then DEVELOPER is in default of this AGREEMENT and is subject to the provisions of Section 14.1 of this AGREEMENT, and the suspension of development activities by the TOWN including, but not limited to, the issuance of building permits and certificates of occupancy.

- (e) The estimated cost of completion of the public improvements to be constructed as described on "Exhibit B" may increase in the future. Accordingly, the TOWN reserves the right to review and adjust the cost estimates at any time in the future, or to require the DEVELOPER to provide an updated estimate of costs, before or after DEVELOPER provides the Improvement Guarantee. TOWN will make adjusted cost estimates according to changes in the Construction Cost Index as published by the *Engineering News Record*. If the TOWN adjusts cost estimates for the Improvements, the TOWN shall give written notice to the DEVELOPER. The DEVELOPER shall, within thirty days after receipt of said written notice, give the TOWN a new or amended Improvement Guarantee in the amount of the adjusted cost estimates. If the DEVELOPER refuses or fails to so give the TOWN a new or amended Improvement Guarantee, the TOWN may draw on the Improvement Guarantee and either hold such funds as security for performance of this AGREEMENT, or spend such funds to finish improvements or correct deficiencies in the public improvements, or it may withhold building permits and certificates of occupancy within the Development, as the TOWN deems appropriate.
- (f) If an Improvement Guarantee is to expire within 30 calendar days and the DEVELOPER has not yet provided a satisfactory replacement, the TOWN may draw on the Improvement Guarantee and either hold such funds as security for performance of this AGREEMENT, or spend such funds to finish improvements or correct deficiencies in the public improvements, as the TOWN deems appropriate.
- (g) If the Improvement Guarantee expires or the entity issuing the Improvement Guarantee becomes non-qualifying, then the TOWN shall furnish written notice to the DEVELOPER of the condition, and within thirty (30) days of receipt of such notice the DEVELOPER shall give the TOWN a substituted qualifying Improvement Guarantee, or augment the deficient security as necessary to bring the security into compliance with the requirements of this Section 1.10. If the DEVELOPER refuses or fails to give the TOWN a substitute qualifying Improvement Guarantee, or augment the deficient security, the TOWN may draw on the Improvement Guarantee and either hold such funds as security for performance of this AGREEMENT, or spend such funds to finish improvements or correct deficiencies in the public improvements, and it may withhold building permits and certificates of occupancy within the Development, as the TOWN deems appropriate.
- (h)

- 1.13 **Insurance.** DEVELOPER shall guarantee, and upon written request by the TOWN, furnish proof to the TOWN that all employees and contractors engaged in the construction of improvements are covered by adequate Workers' Compensation Insurance and Public Liability Insurance through contract requirements and other normal means.
- 1.14 **OSHA Compliance.** DEVELOPER shall require, and upon written request by the TOWN furnish proof to the TOWN, all contractors engaged in the construction of PUBLIC IMPROVEMENTS to faithfully comply with all provisions of the Federal Occupational Safety and Health Act (OSHA).
- 1.15 **Development Impact Fees.** The TOWN has established certain uniform development impact fees that directly address the effect of development intended to occur within the PROPERTY upon the TOWN' infrastructure, administration and delivery of governmental services. The DEVELOPER agrees to the payment of these uniform development impact fees as established by the TOWN. The TOWN and the DEVELOPER further agree that the TOWN may amend the development impact fees from time to time as needed to address changing affects upon the TOWN's infrastructure, administration and deliver of governmental services as a result of development occurring within the TOWN. The development impact fees are to be paid at the then current rate upon subdivision of the property and/or the issuance of building permits whichever is applicable for that particular development impact fee.

2. **CONSTRUCTION OF IMPROVEMENTS.**

- 2.1 **Improvements to be Constructed.** In accordance with the policies and ordinances of the TOWN, the DEVELOPER shall construct all improvements specified in Exhibit B" and will comply with all additional provisions specified in Exhibit F. If there is a discrepancy between the improvements shown on any approved plans or drawings and as listed in Exhibit B, then the larger quantity or more expensive improvement shall be required.
- 2.2 **On-site and Off-site Rights-of-way, Easements, Licenses and Permits.** For full development of the PROPERTY to occur, the DEVELOPER may need to acquire certain off-site and on-site rights-of-way, easements, licenses and permits for the construction of off-site and on-site improvements, as identified in "Exhibit B" and the approved development plans and convey the same to the TOWN. All acquisition costs of off-site and on-site rights-of-way, easements, licenses and permits necessary to serve the PROPERTY shall be the DEVELOPER's sole responsibility, subject to reimbursement as detailed in this MOAPI.

- (a) All such conveyances shall be free and clear of liens, taxes and encumbrances and shall be by plat dedication or by general or special Warranty Deed in form and substance acceptable to the TOWN Attorney. The TOWN at the DEVELOPER's expense shall record all title documents. The DEVELOPER shall also furnish, at its own expense, an ALTA title policy for all interest(s) so conveyed, subject to approval by the TOWN Attorney.
- (b) If the DEVELOPER cannot acquire an off-site or on-site easement or rights-of-way necessary to develop the PROPERTY, the DEVELOPER may request the TOWN's assistance in getting the easements or rights-of-way. Such assistance by the TOWN shall be in compliance with Colorado law authorizing the TOWN's use of eminent domain. The DEVELOPER shall advance to the TOWN all acquisition costs, including any court costs and attorneys' fees, the TOWN may incur in providing assistance.
- (c) The TOWN and the DEVELOPER agree that the acquisition of off-site and on-site rights-of-way, easements, licenses and permit necessary to serve the transportation needs of the PROPERTY are directly related to and generated by development intended to occur within the PROPERTY and that no taking thereby will occur requiring any compensation.

2.3 Construction.

- (a) DEVELOPER shall furnish and install, at its own expense, the improvements listed on "Exhibit B," in conformance with the subdivision plat and final development plan, and with the construction plans, specifications and drawings approved by the TOWN. The Developer will cause his contractors to furnish the Town Engineer with a project schedule of proposed operations at least five (5) days prior to their commencement of construction work. Construction of public improvements shall be completed within a reasonable time, not to exceed two calendar years from the date of commencement.
- (b) If DEVELOPER does not meet the above obligations, then DEVELOPER shall be in default of the AGREEMENT, and the TOWN may exercise its rights under Section 14.1 of this AGREEMENT including the suspension of development activities by the TOWN including, but not limited to, withholding the issuance of building permits and certificates of occupancy.

2.4 Utility Coordination and Installation. In addition to the improvements described on "Exhibit B," that are the DEVELOPER's responsibility to construct, install and develop, DEVELOPER shall also be responsible for coordination of

and payment for installation of on-site and off-site electric, street lights, natural gas, telephone, cable television and other utilities required to serve the Development. All utilities within the Development shall be placed underground to the extent required by the *Frederick Municipal Code*.

2.5 **Utility Relocation.** DEVELOPER shall pay the full cost of relocating existing utilities that the development of the SUBDIVISION may require. DEVELOPER shall relocate all existing overhead utilities within the SUBDIVISION or in road right-of-ways adjacent to the SUBDIVISION, including but not limited to electric or telecommunications lines and cables, underground. Facilities designed for the transmission or distribution of electric energy at voltages greater than 15,000 volts shall be exempt from this requirement.

2.6 **Trash, Debris, Mud, Wind and Water Erosion.**

- (a) **Erosion and Sediment Control Plan.** DEVELOPER shall provide a wind and stormwater erosion and sediment control plan for review and acceptance by the TOWN. The plan shall address the existing and potential erosion and sediment problems to be created by the proposed development. Conservation measures used to mitigate these concerns shall be in accordance with standards and specifications in effect at the time of construction and may include by way of illustration, restrictions on the acreage of land stripped of vegetation, temporary seeding with grass cover, the use of geo-textile and erosion control mats, sprinkling of exposed ground, berms and sedimentation fences, chiseling exposed ground, etc. If applicable, DEVELOPER shall consult the Soil Conservation District regarding erosion and sediment control.
- (b) DEVELOPER agrees that during construction of the development and improvements described herein, DEVELOPER shall take any and all steps necessary to control trash, debris and wind or water erosion in the development. If the TOWN determines that said trash, debris or wind or water erosion causes damage or injury or creates a nuisance, DEVELOPER agrees to abate said nuisance and/or to correct any damage or injury within five (5) working days after notification by TOWN. If DEVELOPER does not abate said nuisance or if an emergency exists, to be determined by the TOWN in its sole discretion, the TOWN may abate the nuisance and/or correct any damage or injury without notice to DEVELOPER, at DEVELOPER's expense.
- (c) DEVELOPER agrees to take any and all steps necessary to prevent the transfer of mud or debris from the construction site onto public rights-of-way and to immediately remove such mud and debris from public rights-

of-way after notification by the TOWN. If DEVELOPER does not abate such mud or debris, or if an emergency exists, TOWN may abate the same at DEVELOPER's expense.

2.7 **State Stormwater Discharge Permit Required.** DEVELOPER shall obtain, if required by state or local statutes or policies, a CDPS "General Permit for Stormwater Discharges Associated with Construction Activity" required during construction.

2.8 **Operation of Construction Equipment.**

- (a) DEVELOPER shall prohibit the operation of construction equipment outside an enclosed structure between the hours of 8:00 p.m. and the hour of 7:00 a.m. on weekdays, or the hour of 8:00 a.m. on legal holidays and weekends. The Town Engineer may, upon written application, alter the hours of operation for good cause.
- (b) The operation of construction equipment for grading or constructing either surface improvements or underground utilities, either public or private, shall be prohibited between the hours of 8:00 p.m. and 7:00 a.m. on weekdays and 4:00 p.m. and 8:00 a.m. on legal holidays and weekends. Upon written request, the Town Engineer may alter the hours of operations.

3. **PUBLIC USE LAND DEDICATION.** Before the issuance of any building permits, DEVELOPER shall convey to the TOWN those certain lands as described or depicted on the subdivision plat as dedicated to public uses. Said conveyance shall be by General or Special Warranty Deed in form and substance satisfactory to the Town Attorney. The DEVELOPER shall, at DEVELOPER's expense, furnish a commitment for title insurance on the property at the time of conveyance. The property shall be free and clear of liens, taxes and encumbrances, except for ad valorem real property taxes for the calendar year of conveyance and thereafter, but subject to all easements, right-of-way, reservations, restrictions, or other title burdens of record, or those easements and right-of-ways that would be readily apparent from a physical inspection. The TOWN shall record all title documents at the DEVELOPER's expense.

4. **WATER RIGHTS.**

4.1 **Water Rights.**

- (a) If not transferred to the TOWN at the time of annexation, the DEVELOPER will transfer to the TOWN 1.2 units of Colorado Big Thompson water for each residential lot, or for each Single Family

Equivalency (SFE) to be constructed within the subdivision before the TOWN records the final Subdivision Plat. For other sized taps or units other than residential units, the required water dedication shall be as described in the Town's Municipal Code, Section 13.

- (b) The TOWN may require the dedication of irrigation water rights that are to be used in the irrigation of park and open space. The DEVELOPER shall by Special Warranty Deed acceptable to the TOWN convey to the TOWN all non-tributary and not non-tributary groundwater as defined by C.R.S. § 37-90-103, whether adjudicated, unadjudicated, permitted or unpermitted, underlying the property.
- (c) The TOWN and the DEVELOPER agree that the water rights dedications are directly related to and generated by development intended to occur within the SUBDIVISION and that no taking thereby will occur requiring any compensation.

5. WATER IMPROVEMENTS.

5.1 Water Service Availability. TOWN provides water service by an intergovernmental agreement with the Central Weld County Water District. TOWN does not guarantee the availability of water service to the DEVELOPER for any phase of the development from the CWCWD system. A determination of water service availability by TOWN shall be made by a water system analysis at the time the DEVELOPER requests water taps.

5.2 Extension of Water Services.

- (a) DEVELOPER shall install at his sole cost and expense, all the water mains, trunk lines, pumping and storage facilities and appurtenances necessary to provide service from the TOWN 's system to the SUBDIVISION pursuant to the TOWN accepted plans, specifications, and as described in "Exhibit B." These extensions may include the oversizing of lines and pumping and storage facilities for future development of adjacent property.
- (b) DEVELOPER shall install at his sole cost and expense, all the water lines, fire hydrants and appurtenances within the SUBDIVISION. Water lines lying within the dedicated right-of-way and utility easements shall be dedicated to the TOWN after construction.
- (c) Any reimbursements to the DEVELOPER for oversizing of water lines and other water facilities will be as specified by the TOWN.

5.3 Water Connection and Plant Investment Fees.

- (a) Water connection and plant investment fees shall be the existing TOWN water connection and plant investment fees at the time that the DEVELOPER requests water service. Water connection and plant investment fees shall be paid when a building permit for a structure is requested from the TOWN. CBT water shares are acceptable in lieu of cash payment for the CBT water share portion of the water tap fee for each water tap.
- (b) If the SUBDIVISION is not already in the Northern Colorado Water Conservancy District, the DEVELOPER agrees to petition for inclusion in said District and to the payment of any fees and taxes levied by the District as a condition of said inclusion.

6. SANITARY SEWER SERVICES

6.1 Provision of Sanitary Sewer Service.

- (a) TOWN provides sewer service by an intergovernmental agreement with the St. Vrain Sanitation District. The DEVELOPER shall comply at the time of development with the District's requirements.
- (b) If the SUBDIVISION is not already in the St. Vrain Sanitation District the DEVELOPER agrees to petition for inclusion in said District and to the payment of any fees and taxes levied by the District as a condition of said inclusion.
- (c) The TOWN shall require proof of purchase of a sewer tap for a building site before the TOWN will issue a building permit for the site.

6.2 Extension of Sanitary Sewer Services.

- (a) DEVELOPER shall install at his sole cost and expense, all the sewer mains, trunk lines, pumping facilities and appurtenances necessary to provide service from the District's system to the SUBDIVISION pursuant to District accepted plans, specifications, and as described in "Exhibit B." These extensions may include the oversizing of lines and pumping facilities for future development of adjacent property.
- (b) DEVELOPER shall install at his sole cost and expense, all the sewer lines and appurtenances within the SUBDIVISION. Sewer lines lying within the

dedicated right-of-way and non-exclusive utility easements shall be dedicated to District after construction.

- (c) Any reimbursements to the DEVELOPER for oversizing of sewer lines and other sewer facilities will be as specified by the District.

6.3 **Sanitary Sewer Service Availability.** TOWN does not warrant the availability of sanitary sewer service to the DEVELOPER for any phase of development. A determination of sanitary sewer service availability by the District shall be made by a system analysis at the time the DEVELOPER requests sanitary sewer taps.

6.4 **Sanitary Sewer Tap and Plant Investment Fees.**

- (a) Sanitary sewer tap and plant investment fees shall be the existing District sanitary sewer tap and plant investment fees at the time that the DEVELOPER requests sewer taps.
- (b) The TOWN shall require proof of payment of the sewer tap and plant investment fees for a building site before the TOWN will issue a building permit for the site.

7. **ELECTRIC SERVICES.**

7.1 **Provision of Electric Service.** The parties agree that the SUBDIVISION will receive electric service from the TOWN. The DEVELOPER shall comply at the time of development with the TOWN's requirements for the extension of main feeder lines, internal subdivision distribution systems, service connections and the payment of any system capital investment fees required by the TOWN to the TOWN at the time that the DEVELOPER requests electric service. All electric facilities serving the SUBDIVISION and constructed by the DEVELOPER shall be dedicated to the TOWN prior to final acceptance.

7.2 **Electric Service Availability.** TOWN does not warrant the availability of electric service to the DEVELOPER for any phase of development. A determination of electric service availability by TOWN shall be made by an electric system analysis at the time the DEVELOPER requests electric service. In the event that the TOWN or United Power determines that it has insufficient electric service capacity, TOWN shall issue no electric service connections until there is electric service capacity available.

7.3 Extension of Electric Services.

- (a) United Power shall install at the DEVELOPER's sole cost and expense, all the electric main feeder lines and appurtenances necessary to provide service from the TOWN or United Power's system to the SUBDIVISION. Extensions may include the oversizing of main feeder lines for future development of adjacent property.
- (b) United Power shall install at the DEVELOPER's sole cost and expense, all the electric distribution system and appurtenances within the SUBDIVISION.
- (c) The DEVELOPER shall advance a refundable construction deposit to United Power equal to the estimated total cost of the line extension and subdivision distribution system construction. Upon completion of the construction of the line extension and distribution system, the construction deposit shall be compared to the actual cost of said construction. If the actual cost of said construction is less than the construction deposit originally estimated, United Power shall thereupon refund the difference to the DEVELOPER. If the actual cost of said construction is greater than the construction deposit originally estimated, the DEVELOPER shall reimburse United Power the difference.
- (d) Any reimbursements to the DEVELOPER for oversizing of main feeder lines and other electric facilities will be as specified in this MOAPI.

7.4 Electric Service Connection, Electric Capital Improvement and Main Feeder Capital Investment Fees. Electric service connection, electric capital improvement and main feeder capital investment fees shall be the existing TOWN electric connection, electric capital improvement and main feeder capital investment fees at the time that the DEVELOPER requests electric service. Electric connection and electric capital improvement fees shall be paid to the TOWN when a building permit for a structure is requested from the TOWN. Main feeder capital investment fees shall be paid as part of the construction deposit required for line extension, subdivision distribution and service connection construction by the TOWN.

8. DRAINAGE IMPROVEMENTS

8.1 Provision of Storm Water Drainage. It is agreed by the parties that the SUBDIVISION will participate in the storm water drainage system provided by the TOWN. The DEVELOPER shall comply at the time of development with the Town's requirements.

- (a) DEVELOPER shall construct drainage improvements for the development in accordance with the master drainage plan PROPERTY prepared by the DEVELOPER and reviewed and accepted by the TOWN and the responsible drainage district, if any. These improvements may consist of on-site and off-site improvements, including but not limited to, storm water lines, drainage swales, pumping, storage facilities and storm water treatment facilities. The improvements may include the oversizing of facilities to accommodate future development of adjacent property or to accommodate pass-through of historical flows from adjacent property.
- (b) DEVELOPER shall install at his sole cost and expense, all the storm water lines, drainage swales, pumping, detention and storm water treatment facilities within the SUBDIVISION. DEVELOPER shall install at his sole cost and expense, such sedimentation and erosion control measures as are required. DEVELOPER shall install at his sole cost and expense, such groundwater and foundation drainage system as may be required for development of the SUBDIVISION.
- (c) Any reimbursements to the DEVELOPER for oversizing of storm sewer lines and other storm water facilities, or the construction of off-site facilities will be as specified in this MOAPI.

8.2 Master Drainage Plan.

- (a) The DEVELOPER, at his sole expense shall prepare a master drainage plan for the SUBDIVISION. The master drainage plan shall show the location and extent of all drainage system improvements, including but not limited to collection, detention and treatment facilities for on-site storm water and the pass-through of off-site historical storm water flows based on the 100 year storm flows. If the master drainage plan results in changes to drainage affecting other property or facility owners, the TOWN may require the DEVELOPER to obtain written consent from each property or facility owner for the changes before the TOWN will accept the plan.
- (b) Storm water discharges and runoff shall be designed to discharge into TOWN accepted drainage ways and facilities, and shall, to the maximum extent possible, avoid conveying storm water discharges in irrigation ditches. In the event that storm water discharges into an irrigation ditch, the DEVELOPER shall by separate agreement obtain the written consent of the owner(s) of the irrigation facility to accept said storm water. A copy of the agreement shall be provided to the TOWN before the TOWN will accept the master drainage plan.

- (c) The master drainage plan shall define the DEVELOPER's responsibility for on-site surface drainage improvements. The master drainage plan shall include construction of facilities to convey, collect and detain storm water and to remove pollutants from it.
- (d) The master drainage plan shall define the DEVELOPER's responsibility for groundwater and foundation drainage improvements, if any. Groundwater and foundation drainage improvements shall not discharge into public storm water facilities or improvements without prior written acceptance by the TOWN. DEVELOPER shall be responsible for obtaining all state and federal permits that may be required for the discharge of this groundwater to the state waters. The DEVELOPER shall be responsible for ongoing maintenance of all improvements necessary to transport groundwater to a natural drainageway or storm sewer system approved by the TOWN.
- (e) The master drainage plan shall define the DEVELOPER's responsibility for off-site improvements including the oversizing of facilities.
- (f) The TOWN may require the DEVELOPER to update the master drainage plan for the SUBDIVISION for the review of each final plat of a phased project to determine the design, timing, and responsibility for the improvements.

8.3 Drainage Improvement Construction.

- (a) DEVELOPER shall construct drainage improvements for the PROPERTY in accordance with the Town's Master Drainage Plan and plans and construction specifications accepted by the TOWN and as described in "Exhibit B."
- (b) The DEVELOPER shall so design and construct all storm drainage facilities as to control all stormwater runoff greater than that historically generated from the SUBDIVISION. The DEVELOPER shall not alter historic flows in a way that would adversely affect upstream or downstream properties.
- (c) The DEVELOPER shall construct all improvements in an appropriate sequence to meet the demands that development of the SUBDIVISION generates. The DEVELOPER shall meet all TOWN standards and specifications in effect at the time of construction.

- 8.4 **Overlot Grading of the SUBDIVISION.** DEVELOPER shall initiate no overlot grading until the TOWN issues written acceptance of utility plans. The DEVELOPER shall provide temporary erosion control during overlot grading until the drainage improvements are completed.
- 8.5 **Drainage Improvement Completion Before Issuance of Building Permits.** Drainage improvements shall be completed and granted conditional acceptance by the TOWN before the issuance of building permits. Completion of the improvements shall include the certification by a licensed professional engineer that DEVELOPER has constructed the drainage facilities that serve the development in conformity with the plans reviewed by the TOWN. Any deviation from the accepted plans shall be the responsibility of the DEVELOPER to correct. Said certification shall be submitted to the TOWN at least two (2) weeks before the date of issuance for any subsequent building permit.
- 8.6 **Modification of Accepted Drainage Improvements.** Drainage improvements for each lot shall be constructed by the DEVELOPER in accordance with plans Approved by the TOWN. Said plans shall conform to the TOWN's then existing regulations. DEVELOPER shall furnish copies of accepted plans to subsequent purchasers of lots and record a disclosure with all lots sold that it shall be the responsibility of the fee title holder to maintain the stormwater drainage improvements as constructed. Any changes from the Approved plans with respect to grade elevation, storm drainage facility design, or landscaping that will change, modify, impede or otherwise block the flow of stormwater on or across any private property, that occur as a result of the construction of houses and/or other development of lots, whether by the DEVELOPER or other parties, shall require the acceptance of the TOWN. The TOWN may withhold the issuance of building permits and certificates of occupancy until the TOWN has reviewed and determined that such changes are acceptable for the safe and efficient delivery of storm drainage water.
- 8.7 **Stormwater Drainage Basin Fees.** The DEVELOPER shall pay any stormwater drainage basin fees to the TOWN or Special District, whichever is applicable.
- 8.8 **Areas of Special Flood Hazard.** Construction within a FEMA designated "area of special flood hazard" is prohibited except as may be allowed in accordance with Article 8 of the Frederick Land Use Code. If any portion of the SUBDIVISION lies within an area of special flood hazard, including unmapped areas of special flood hazard, as defined by the Federal Emergency Management Agency (FEMA), the DEVELOPER is responsible for all the necessary design and the submittal of an application to FEMA for proposed changes to the designation to enable development of the SUBDIVISION within said areas. The TOWN must review and accept any submittal to FEMA before it is submitted to FEMA. FEMA

shall approve any change in the area of special flood hazard designation before they will permit the DEVELOPER to undertake development activities within the area affected by the proposed change.

9. TRANSPORTATION FACILITIES

9.1 Traffic Impact Study. The DEVELOPER shall provide the TOWN a traffic impact study prepared by a transportation professional with adequate experience in transportation engineering and planning, in accordance with the criteria specified by the TOWN at the time of submittal of a final plat, unless the TOWN waives the requirement. The traffic impact study shall give special consideration to the use of traffic calming techniques and alternative modes of transportation in the design of the transportation facilities.

9.2 Off-site and On-site Rights-of-way, Easements, Licenses and Permits.

- (a) For full development of the SUBDIVISION to occur, the DEVELOPER may need to acquire certain off-site and on-site rights-of-way, easements, licenses and permits for the construction of off-site and on-site improvements, as identified in the accepted traffic study or future updates to the study. All acquisition costs of off-site and on-site rights-of-way, easements, licenses and permits necessary to serve the SUBDIVISION shall be the DEVELOPER's sole responsibility, subject to reimbursement as detailed in this MOAPI.
- (b) If the DEVELOPER cannot acquire an off-site or on-site easement or rights-of-way necessary to develop the SUBDIVISION, the DEVELOPER may request the TOWN's assistance in getting the easements or rights-of-way. Such assistance by the TOWN shall be in compliance with Colorado law authorizing the TOWN's use of eminent domain. The DEVELOPER shall advance to the TOWN all acquisition costs, including any court costs and attorneys' fees, the TOWN may incur in providing assistance.

9.3 On-site and Off-site Transportation Improvements. For full development of the SUBDIVISION to occur, certain on-site and off-site transportation improvements, as identified in the accepted traffic study, may be necessary. The DEVELOPER shall construct the improvements in a sequence acceptable to the TOWN to meet the demands that development of each phase of the SUBDIVISION will generate. The DEVELOPER shall follow all applicable provisions and standards of the Frederick Municipal Code. The DEVELOPER agrees to construct or contribute to the construction of all on-site and off-site transportation improvements to accommodate transportation needs that each phase of the SUBDIVISION development will generate.

- 9.4 **On-site and Off-site Arterial Street Improvements and Arterial Intersection Improvements.** The DEVELOPER's construction of on-site and off-site arterial street improvements and arterial intersection improvements in excess of the cost of a collector street and collector street intersection, excluding on-site rights-of-way and site specific improvements, will be subject to reimbursement by the TOWN or adjacent benefitted property as specified in this MOAPI.
- 9.5 **On-site Transportation Improvements.** The DEVELOPER is solely responsible for construction of all transportation improvements to accommodate development of the SUBDIVISION that do not directly benefit other properties. The TOWN will not provide for reimbursement to the DEVELOPER for these expenses.
- 9.6 **Street Improvements.** For the purposes of this AGREEMENT, "street improvements" shall be defined to include, but not limited to, all improvements within the right-of-way such as bridges, sub-base preparation, road base, asphalt, concrete, seal coat, curb and gutter, medians, entryways, traffic calming features, underground utilities, sidewalks, bicycle and pedestrian paths, traffic signs, street lighting, street name signs, landscaping, irrigation systems and drainage improvements. Street improvements other than curbs, gutters, sidewalks and signs, shall not be installed until all utility lines to be placed within the right-of-way have been completely installed, including individual lot service lines leading in from the main to the property line. All street improvements shall be constructed and installed pursuant to TOWN accepted plans, specifications, and as detailed in "Exhibit B."
- 9.7 **Street Signs, Traffic Signs and Striping.** TOWN will install, at DEVELOPER's expense, striping, street name signs, stop signs, speed limit signs and other regulatory signs on all internal streets and on those off-site streets as determined appropriate by the TOWN. TOWN shall install signs and striping in accordance with the Model Traffic Code, as from time to time amended, and other applicable legal requirements.
- 9.8 **Street Lights.** The TOWN shall install at the DEVELOPER's sole costs and expense all required street lighting and underground electrical supply.
- 9.9 **School Bus Shelters.** DEVELOPER will install at his sole cost and expense appropriately designed pedestrian shelters at school bus stops within the development. The location of the shelters shall be decided in cooperation with the School District. School bus shelters shall be owned and maintained by the Homeowners Association.

9.10 **Mail Boxes.** The DEVELOPER shall coordinate with the U.S. Postal Service and bear the cost of installing cluster mailboxes for the subdivision.

10. **PARKS AND OPENSOURCE**

10.1 **Park and Open Space Improvements.**

- (a) **Park Master Plan.** Park and open space improvements for the development shall be designed by a professional park planner employed by the DEVELOPER, or by the TOWN at the DEVELOPER's sole cost, and constructed in accordance with the resulting master plan accepted by the TOWN (and the Carbon Valley Recreation District, if the park and/or open space is to be dedicated to the District) and as detailed in "Exhibit B." These improvements may include but not be limited to, the development of passive use open spaces and active use parks and open space and playgrounds.
- (b) DEVELOPER shall construct, develop and install at his sole cost and expense, all landscaping, irrigation systems, ballfields, courts, skate parks, playgrounds, picnic shelters, restrooms, nature observation stations, trails and walkways within the SUBDIVISION in accordance with the master park plan.
- (c) Any reimbursements to the DEVELOPER for the construction of facilities to be shared by other developments will be as specified in this MOAPI.

11. **FIRE PROTECTION FACILITIES.** The DEVELOPER shall be solely responsible for installing all fire hydrants and other fire protection facilities in the SUBDIVISION and on its perimeter as may be required by the Frederick-Firestone Fire Protection District.

12. **LANDSCAPING.**

12.1 **Public and Private Landscape Improvements.**

- (a) **Public Landscaping Improvements.** DEVELOPER shall employ a qualified landscape planner or architect to design landscape improvements for public lands and rights-of-way within the development. DEVELOPER shall construct landscape improvements as required in the landscape and irrigation plans reviewed and accepted by the TOWN and as detailed in "Exhibit B."
- (b) **Private Landscaping Improvements.** For private landscape improvements, excluding single family detached residential lots,

DEVELOPER shall furnish a final landscape plan to the TOWN for review and acceptance before installation of landscape improvements.

13. **DEVELOPMENT REQUIREMENTS AND EXACTIONS NOT A TAKINGS.**

The TOWN and the DEVELOPER agreed that in all instances the requirements and exactions contained in this agreement are directly related to and generated by the development intended to occur within the SUBDIVISION and that no takings thereby will occur requiring any compensation.

14. **MISCELLANEOUS TERMS**

14.1 **Breach of AGREEMENT, Default.** In the event that the DEVELOPER should fail to timely comply with any of the terms, conditions, covenants and undertakings of this AGREEMENT, the TOWN in its sole discretion may declare the DEVELOPER in default and after giving thirty (30) days written notice may call the security provided in Section 1.10 and exercise all other remedies available to the TOWN. The TOWN may withhold any additional building permits, certificates of occupancy, or provision of new utilities, fixtures or services until the completion of the improvements. Any cost incurred by the TOWN including, but not limited to, administrative costs and reasonable attorneys' fees, in pursuit of any remedies due to the breach by the DEVELOPER shall be paid by the DEVELOPER. The TOWN may deduct these costs from the Improvement Guarantee. Failure to timely complete construction of improvements that is solely due to inclement weather, acts of God, material shortages, labor strikes, and other matters not within the DEVELOPER's control shall not be considered a breach of the AGREEMENT.

14.2 **Reimbursement to TOWN.** The TOWN may complete construction, repairs, replacements, or other work for DEVELOPER pursuant to Sections 1.6, 1.7, 1.8, or 14.1 of this AGREEMENT with funds other than the Improvement Guarantee, in which event DEVELOPER shall reimburse the TOWN within thirty (30) days after receipt of written demand and supporting documentation from the TOWN. If DEVELOPER fails to so reimburse TOWN, then DEVELOPER shall be in default of the AGREEMENT and the TOWN may exercise its rights under Section 14.1 of this AGREEMENT.

14.3 **Access to Public Street Required for Building Permit.** TOWN shall issue no building permits for any structure located more than five hundred feet from a single point of access.

14.4 **Indemnification and Release of Liability.**

- (a) **General Liability.** DEVELOPER agrees to indemnify and hold harmless the TOWN, its officers, employees, agents, and servants, and to pay any judgments rendered against said persons because of any suit, action, or claim caused by, arising from, or due to acts or omissions by the DEVELOPER, its officers, employees, agents, consultants, contractors, and subcontractors, and to pay to the TOWN and said persons their reasonable expenses, including, but not limited to, reasonable attorneys' fees and reasonable expert witness fees, incurred in defending any such suit, action or claim; provided, however, that DEVELOPER's obligation herein shall not apply to the extent said suit, action or claim results from any acts or omissions of officers, employees, agents or servants of the TOWN or conformance with requirements imposed by the TOWN. Said obligation of DEVELOPER shall be limited to suits, actions or claims based upon conduct before "final acceptance" by the TOWN of the construction work. DEVELOPER acknowledges that the TOWN's review and approval of plans for development of the property is done in furtherance of the general public's health, safety and welfare and that no immunity is waived and that no specific relationship with, or duty of care to, the DEVELOPER or third party is assumed by such review or approval.
- (b) **Drainage Liability.** The DEVELOPER shall indemnify and hold harmless the TOWN for any liability the latter may have or account of any change in the nature, direction, quantity, or quality of historical drainage flow resulting from the development of this PROPERTY or from the construction of streets or storm sewers therein. In addition, the DEVELOPER promises to reimburse the TOWN for any costs including, but not limited to, reasonable attorneys' fees, which the TOWN incurs in acquiring or condemning any rights-of-way or easements that the DEVELOPER requires the TOWN to acquire or condemn, or which the TOWN is held to have acquired or condemned for drainage, because of the development of this PROPERTY.

14.5 **Governmental Immunities Act.** The TOWN is relying on, and does not waive or intend to waive by any provision of this AGREEMENT, the monetary limitations or any rights, immunities and protection provided by the Colorado Governmental Immunities Act (C.R.S. 24-10-101 et seq.) as from time to time amended, or otherwise available to the TOWN, its officers, agents, employees, attorneys, engineers, planners, indemnifiers and insurers.

14.6 **Recording of AGREEMENT.** This AGREEMENT shall be recorded with the Weld County Clerk and Recorder and shall be a covenant running with the land herein described in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof. The DEVELOPER shall include

on the final plat a "plat note" noting the existence of the AGREEMENT and its attached Exhibits by reference to its reception number as recorded by the Weld County Clerk and Recorder. All recording fees shall be paid by the DEVELOPER. The TOWN shall retain the recorded AGREEMENT.

- 14.7 **Binding Effect of AGREEMENT.** This AGREEMENT shall run with the land included within the SUBDIVISION and shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.
- 14.8 **Assignment, Delegation and Notice.** DEVELOPER shall provide to the TOWN for approval, written notice of any proposed transfer of title to any portion of the Development and of the AGREEMENT obligations to any successor, as well as arrangements, if any, for delegation of the improvement obligations hereunder. DEVELOPER and successor shall, until written TOWN approval of the proposed transfer of title and delegation of obligations, be jointly and severally liable for the obligations of DEVELOPER under this AGREEMENT.

EXCEPTION: The DEVELOPER may sell individual developed lots, commercial lots or single units in a multi-family development without the TOWN's approval.

- 14.9 **Modification and Waiver.** No modification of the terms of this AGREEMENT shall be valid unless in writing and executed with the same formality as this AGREEMENT, and no waiver of the breach of the provisions of any section of this AGREEMENT shall be construed as a waiver of any subsequent breach of the same section or any other sections that are contained herein.

- 14.10 **Addresses for Notice.** Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

TOWN:

Town of Frederick
c/o Town Clerk
P.O. Box 435
Frederick, Colorado 80530

DEVELOPER:

Rocky Mountain Christian Church
c/o Business Administrator
9447 Niwot Road
Longmont, CO 80530

With copy to:

Samson, Pipis and Marsh, LLC
255 Weaver Park Road, Suite 200
P.O. Box 1079
Longmont, CO 80502

Or to such other address or the attention of such other person(s) as hereafter designated in writing by the applicable parties in conformity with this procedure. Notices shall be effective upon mailing or personal delivery in compliance with this paragraph.

- 14.11. **Force Majeure.** Whenever an agreed upon deadline requires DEVELOPER to complete construction, maintenance, repair, or replacement of improvements, said deadline shall be extended for a reasonable time if the performance cannot be completed in a timely manner due to Acts of God, or other circumstances constituting force majeure, or circumstances beyond the reasonable control of DEVELOPER.
- 14.12. **Approvals or Acceptance.** Whenever approval or acceptance of a matter is required or requested of the TOWN pursuant to any provisions of this AGREEMENT, the TOWN shall act reasonably in responding to such matter.
- 14.13. **Previous Agreements.** All previous written and recorded agreements between the parties, their successors, and assigns, including, but not limited to, any Annexation Agreement, shall remain in full force and effect and shall control this Development. If any prior agreements conflict with this AGREEMENT, then this AGREEMENT controls.

- 14.14. **Title and Authority.** DEVELOPER warrants to the TOWN that it is the record owner for the property within the Development or is acting in accordance with the currently valid and unrevoked power of attorney of the record owner hereto attached. The undersigned further warrant to have full power and authority to enter this AGREEMENT.
- 14.15. **Severability.** This AGREEMENT is to be governed and construed according to the laws of the State of Colorado. In the event that upon request of DEVELOPER or any agent thereof, any provision of the AGREEMENT is held to violate municipal, state, or federal laws and thereby rendered unenforceable, the TOWN, in its sole discretion, may determine whether the remaining provisions will or will not remain in force.
- 14.16. **Attorney Fees.** In the event that either party finds it necessary to retain an attorney in connection with a default by the other as to any of the provisions contained in this AGREEMENT, the defaulting party shall pay the other's reasonable attorney's fees and costs incurred in enforcing the provisions of this AGREEMENT.
- 14.17. **Original Counterparts.** This Agreement may be executed in counterparts, each of which will be an original, but all of which together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties have executed this agreement as of the date first set forth above.

TOWN OF FREDERICK

DEVELOPER

By _____
Eric E. Doering, Mayor

By _____

ATTEST:

By _____
Nanette S. Fornof, Town Clerk

STATE OF COLORADO)

) **SS:**

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
20__ by _____ as Mayor and _____ as Town Clerk
of the Town of Frederick.

My commission expires:

Witness my hand and official seal.

Notary Public

STATE OF COLORADO)

) **SS:**

COUNTY OF _____)

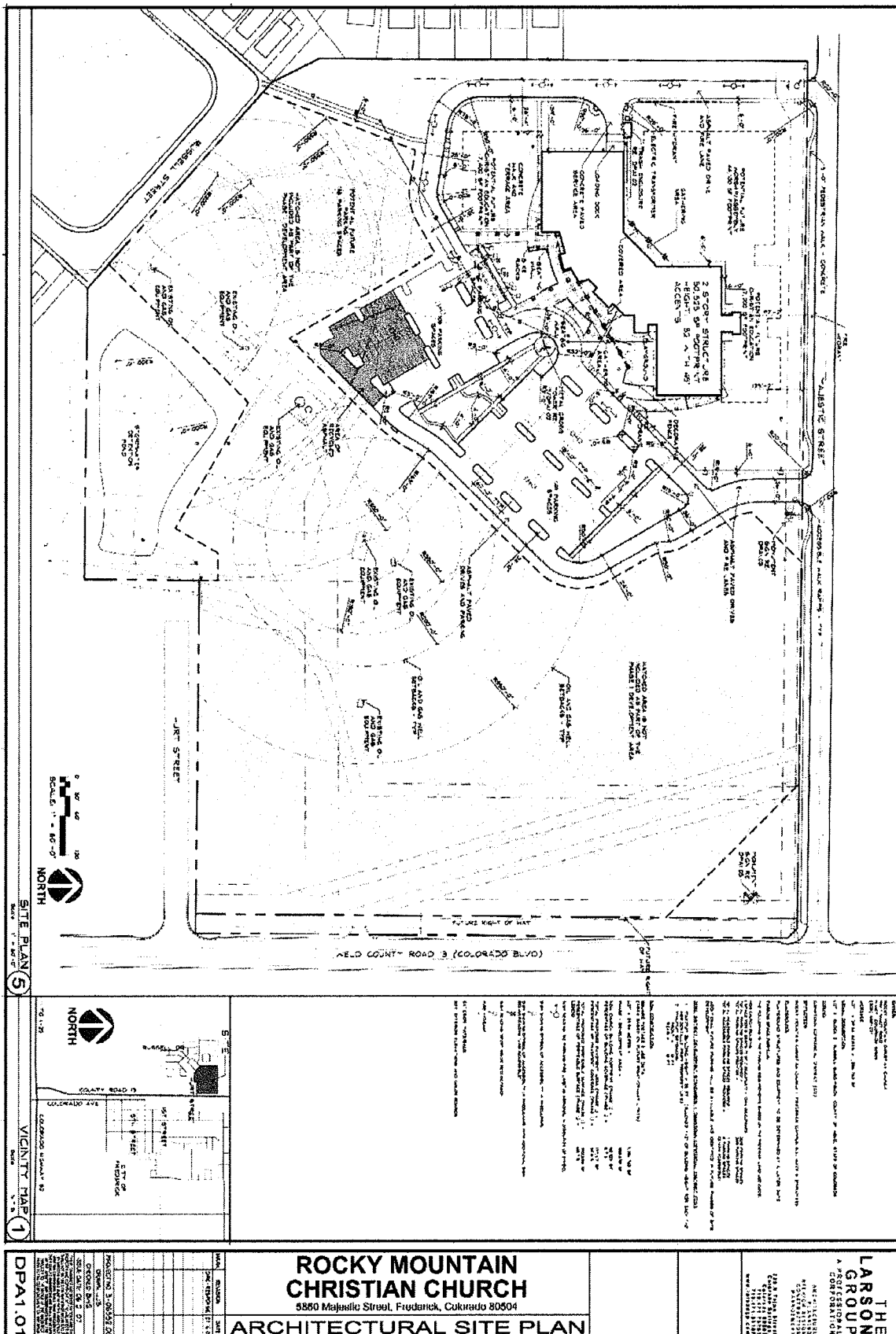
The foregoing instrument was acknowledged before me this ____ day of _____,
20__ by _____ (signator's name) as _____
_____ (position/title).

My commission expires:

Witness my hand and official seal.

Notary Public

EXHIBIT A SITE PLAN



ROCKY MOUNTAIN CHRISTIAN CHURCH

Exhibit B



Date: July 28, 2008

To: Mr. John Goad
Western Project Management

Project: #206036 - Rocky Mountain Christian Church - Frederick Campus

WATERLINE

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL COST
1	8" C-900 PVC	2932	LF	23.10	\$67,729
2	6" DIP water line	129	LF	25.20	\$3,251
3	8" gate valve and box	16	EA	1070.00	\$17,120
4	6" gate valve and box	4	EA	750.00	\$3,000
5	8"x8" cross	1	EA	530.00	\$530
6	8"x8" tee	6	EA	450.00	\$2,700
7	8"x6" MJ swivel tee	2	EA	490.00	\$980
8	8" horizontal bend	2	EA	330.00	\$660
9	6" horizontal bend	1	EA	260.00	\$260
10	8"x6" MJ reducer	1	EA	260.00	\$260
11	8" plug	4	EA	250.00	\$1,000
12	2" blowoff assembly	4	EA	700.00	\$2,800
13	8" mechanical lowering	3	EA	3210.00	\$9,630
14	8" fire line riser	1	EA	1520.00	\$1,520
15	Fire Hydrant assembly	3	EA	2690.00	\$8,070
16	Fill, Flush, and pressure test waterline	3061	LF	0.63	\$1,926
17	Cut in 8"x8" Tee	2	EA	2700.00	\$5,400
18	6" mechanical lowering	1	EA	2910.00	\$2,910
19	Asphalt R/R	25	SY	46.00	\$1,150
20	Traffic control	1	LS	2510.00	\$2,510
21	Flowfill backfill	21	CY	82.00	\$1,722
22	Construction management	1	LS	5521.78	\$5,522

Subtotal \$140,650

MAJESTIC STREET

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL COST
1	Cut to fill	4445	CY	2.80	\$12,446
2	Rough grade	8889	SY	1.30	\$11,556
3	Earthwork mobilization	1	LS	1108.50	\$1,109
4	Asphalt mobilization	1	EA	1300.00	\$1,300
5	Asphalt scarify and recompact	6841	SY	0.80	\$5,473
6	Asphalt pave Majestic St.	6841	SY	21.00	\$143,661
7	Stripe Majestic St.	1	LS	4425.00	\$4,425
8	Survey	1	LS	6670.00	\$6,670
9	Form, place, finish concrete	1	LS	37498.00	\$37,498
10	Concrete materials	240	CY	82.60	\$19,824
11	Construction management	1	LS	9969.03	\$9,969
12					\$0

Subtotal \$253,930

WIDENING OF WCR 13

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL COST
1	Earthwork mobilization	1	LS	1663.00	\$1,663
2	Earthwork traffic control	1	LS	2034.00	\$2,034
3	Cut to Fill	730	CY	4.50	\$3,285
4	Finegrade	850	SY	1.80	\$1,530
5	Erosion Control	1	LS	5812.00	\$5,812
6	Asphalt Mobilization	1	EA	500.00	\$500
7	Asphalt scarify and recompact	535	SY	2.20	\$1,177
8	Asphalt pave turn lane	535	SY	26.50	\$14,178
9	Re-work storm sewer	1	LS	786.00	\$786
10	Stripe WCR 13	1	LS	1340.00	\$1,340
11	Traffic control	1	LS	1948.00	\$1,948
12	Construction management	1	LS	1399.67	\$1,400
13					\$0

Subtotal **\$35,652**

COR 011 R1 MAJESTIC ST. REVISIONS

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL COST
1	Survey	1	LS	2640.00	\$2,640
2	Asphalt scarify and recompact	900	SY	0.80	\$720
3	Asphalt pave widening	900	SY	21.00	\$18,900
4	Rough grade Curb and Gutter North side of Majestic	2000	LF	1.40	\$2,800
5	Additional Silt Fence	700	LF	1.50	\$1,050
6	Rough grade widened Majestic St.	900	SY	1.30	\$1,170
7	Additional Cut to Fill	1060	CY	2.80	\$2,968
8	Rough grade 8ft sidewalk	5520	SF	0.45	\$2,484
9	Rough grade sidewalk that widened	4050	SF	0.45	\$1,823
10	Form, pour, finish 4" sidewalk	5947	SF	1.90	\$11,286
11	Form, pour, finish 30" Curb and Gutter	2058	LF	13.23	\$27,227
12	Concrete material	228	CY	82.60	\$18,838
13	Construction management	1	LS	3777.41	\$3,777

Subtotal **\$95,683**

COR 053, WCR 13 flyash fill

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL COST
1	Flyash at 12" depth with 6% flyash	690	SY	9.10	\$6,279
2	Mobilization	1	LS	2200.00	\$2,200
3	Construction management	1	LS	346.48	\$346
4					\$0

Subtotal **\$8,825**

COR 069, WCR 13 recycled concrete fill

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL COST
1	Dig out soft spots	1	LS	593.00	\$593
2	Material and equipment to replace	1	LS	2898.00	\$2,898
3	Construction management	1	LS	142.66	\$143
4					\$0

Subtotal **\$3,634**

Exhibit B Page 2

COR 044 WCR 13 AND MAJESTIC ST. GRADE CHANGES

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL COST
1	Survey	1	LS	215.00	\$215
2	Sawcut asphalt	1	LS	3270.00	\$3,270
3	Asphalt scarify and recompact	155	SY	2.20	\$341
4	Asphalt pave back	155	SY	26.50	\$4,108
5	Construction management	1	LS	324.20	\$324
6					\$0
Subtotal					\$8,258

LANDSCAPE IMPROVEMENTS

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL COST
1	Estimated re-seeding of Majestic St	1	LS	4950.00	\$4,950
2					\$0
Subtotal					\$4,950

Total	\$551,582
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EXHIBIT C: LETTER OF CREDIT

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EXHIBIT D

MEMORANDUM OF UNDERSTANDING CONCERNING REIMBURSEMENT FOR OVERSIZING PUBLIC IMPROVEMENTS

THIS AGREEMENT is made and entered into this ____ day of _____, 2009, by and between the TOWN of Frederick, a Colorado municipal corporation, whose address is P.O. Box 435, Frederick, Colorado ("TOWN"), and Rocky Mountain Christian Church, a Colorado non-profit corporation, whose address 9477 Niwot Road, Longmont, CO 80503 ("DEVELOPER").

WHEREAS, DEVELOPER owns certain real property situated within the TOWN known as Lot 2, Block 2, of the Russell Subdivision ("Subdivision" or "Development"); and

WHEREAS, pursuant to the Memorandum of Agreement for Public Improvements ("MOAPI") dated _____ between the TOWN and DEVELOPER, DEVELOPER has been required to provide at his sole expense, certain public improvements in conjunction with the development of said property, and

WHEREAS, certain undeveloped realty which is in the TOWN or which may be annexed to the TOWN, and not owned by the DEVELOPER, is so situated that upon anticipated subsequent development, the subsequent developer will directly benefit from the aforesaid public improvements provided by the DEVELOPER; and

WHEREAS, the TOWN is willing to lend its good offices in endeavoring to assist the DEVELOPER in the recoupment of reasonable expenses attributable to the benefit of the public improvements obtained by such subsequent developer at the time of development.

NOW, THEREFORE, it is the understanding of the parties that they will do and perform as follows:

1. **Reimbursement for Public Improvements.** The parties hereby agree that the DEVELOPER shall be entitled to recover a portion of his expenses under the MOAPI from subsequent development that uses capacity in facilities provided by the DEVELOPER. The recovery allowed shall be in direct proportion to the amount of capacity in the facilities used by the subsequent development. The DEVELOPER shall provide the TOWN with a signed statement of reimbursement charges from a qualified engineer, accompanied by supporting documentation, setting a dollar amount per measurable unit to be charged subsequent developers for their proportional share of the total capacity in the facilities. The reimbursement charge is subject to approval by the TOWN and is determined by the division of the total cost of the facility by the total number of measurable units of capacity (gallons, dwelling units, trips generated, acreage, square footage, etc.) in the facility. The engineer's statement of reimbursement charges

shall be attached to this agreement and incorporated therein. The DEVELOPER may recover for only that portion of the facilities that are used by a subsequent developer.

2. **Notice of Claim for Reimbursement by Subsequent Developer.** Upon written notification by DEVELOPER to the TOWN of a claim for reimbursement from a subsequent developer of property benefited by said public improvements, TOWN agrees to require reimbursement from the subsequent developer as a condition of final development approval, along with interest at the legal rate then provided. Notice of the claim for reimbursement must be received by the TOWN during the initiation of subsequent development, i.e. upon application for annexation or platting. The DEVELOPER's claim for reimbursement is forfeited if written notice is received by the TOWN after final action is taken on the subsequent development.
3. **Time Limit for Reimbursement Eligibility.** Reimbursement from subsequent developers shall be limited to those developments which receive annexation or final plat approval within twenty (20) years of the date of this Agreement.
4. **No Financial Commitment by TOWN.** Nothing in this Memorandum shall be construed as a commitment of financial liability to the DEVELOPER to otherwise require collection or payment of the amount claimed for reimbursement through participation of a subsequent developer, the TOWN is merely engaging to extend its good offices to facilitate an equitable resolution in achieving fair participation in public improvement costs.
5. **Attorney Fees.** In the event that any party finds it necessary to retain an attorney in connection with a default by another as to any of the provisions contained in this agreement, the defaulting party shall pay the other's reasonable attorney's fees and costs incurred in enforcing the provisions of this Agreement.
6. **Binding Effect.** This agreement shall bind and extend to the heirs, representatives, successors and assigns of the parties.
7. **Whole Agreement.** This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. Except as provided herein there shall be no modifications of this Agreement except in writing, executed with the same formalities as this instrument. Subject to the conditions precedent herein this Agreement may be enforced in any court of competent jurisdiction.

TOWN OF FREDERICK	DEVELOPER
By: , Mayor	By: Title:
ATTEST:	
By: , Town Clerk	

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20
by _____ as Mayor and _____ as Town Clerk of the Town of Frederick.

My commission expires:

Witness my hand and official seal.

Notary Public

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20
by _____ as _____.

My commission expires:

Witness my hand and official seal.

Notary Public

EXHIBIT E

MEMORANDUM OF UNDERSTANDING CONCERNING REIMBURSEMENT FOR OVERSIZING PUBLIC IMPROVEMENTS BY OTHERS

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EXHIBIT F

SPECIAL PROVISION APPLYING TO PUBLIC IMPROVEMENTS

The following special provisions apply only to the Rocky Mountain Christian Church Site Plan, Lot 2, Block 2, Russell Subdivision. In the event of a conflict between any paragraph, sentence or clause of this Exhibit F and similar provisions elsewhere in this AGREEMENT, the paragraph, sentence or clause of this Exhibit F shall prevail.

A. Reimbursement to DEVELOPER for Public Facilities and Off-site Transportation Improvements.

TOWN may require DEVELOPER to acquire off-site rights-of-way, easements, licenses and permits and to construct on-site and off-site arterial street improvements and arterial intersection improvements in excess of the cost of a collector street and collector street intersection. The parties recognize that such transportation improvements benefit adjacent property. The following Areas are shown on the attached figure. Public infrastructure improvements eligible for partial reimbursement are as follows:

1. DEVELOPER has constructed Majestic St from Colorado Blvd. to Hickory Ct. The TOWN shall require future development on the north side of Majestic St to reimburse DEVELOPER for a proportional share of the cost of the north half of Majestic Street (Area 2 and Area 3N). The maximum amount of reimbursement that the TOWN shall require of Lots 1, 2, and 3 in Block 1 of Meadowlark Business Park shall be \$115,346 (Area 2). The maximum amount of reimbursement that the TOWN shall require of Meadowlark Business Park Filing 2, Outlot C shall be \$53,033 (Area 3N).
2. The TOWN shall reimburse DEVELOPER for the south half of Majestic St., inclusive of proportional costs of the sidewalk, and street lighting improvements, these improvements being required components of the installed infrastructure, for the portion of Majestic St. from the west property line of the Rocky Mountain Christian Church site to Hickory Court (Area 3S). The total amount of this reimbursement shall be \$84,412.
3. The TOWN shall reimburse DEVELOPER for 50% of the cost of the turn lane on Colorado Blvd that has been constructed by DEVELOPER (Area 4). The TOWN and DEVELOPER agree that the average of the amount of traffic that the church site generates in a week is 50% of the total amount of traffic that will utilize this turn lane. The TOWN shall reimburse DEVELOPER in the amount of \$28,185 for the remaining 50% share of background traffic.
4. As a requirement of development, the TOWN shall require future developers and future development that occurs within 20 years of the date of this agreement to reimburse Rock Mountain Christian Church for the costs mentioned in paragraph 1, above. Additionally, the TOWN will hold 75% any transportation impact fees collected in association with building permits issued in Meadowlark Business

Park, Filings 1 or 2, or in Outlot C, otherwise known as Filing 3, to be used toward reimbursement of these amounts to DEVELOPER, subject to budget approval by the then current Town Board. The TOWN will reimburse the DEVELOPER from these actually collected road impact fees. DEVELOPER shall be reimbursed for the costs in paragraph 1, by a combination of payments from future developers and payments from road impact fees collected. DEVELOPER agrees that the TOWN shall be entitled to collect from future developers described herein, an amount equal to any collected road impact fees paid by the TOWN to the DEVELOPER. In no case shall DEVELOPER be reimbursed more than the amounts stated in paragraphs 1, 2, and 3, above for transportation related improvements.

B. Reimbursement to DEVELOPER from future developers for Public Facilities and Off-site Waterline Improvements.

1. For Area 2, any development between Majestic Street and Iris Parkway which connects to the waterline in Majestic Street shall reimburse DEVELOPER for an equitable share of the total cost of the waterline. The waterline costs may be prorated by lot frontage along Majestic Street, excluding the detention pond outlot of Meadowlark business park, or by other reasonable methods as determined by the Town of Frederick Engineering Department. The maximum amount of reimbursement for Area 2 shall not exceed \$24,010.
2. For Area 3N, any development which connects to the waterline in Majestic Street and has frontage along Majestic Street shall reimburse DEVELOPER for an equitable share of the total cost of the waterline. The waterline costs may be prorated by lot frontage along Majestic Street, or by other reasonable methods as determined by the Town of Frederick Engineering Department. The maximum amount of reimbursement for Area 3N shall not exceed \$11,337.
3. For Area 3S, any development south of Majestic Street and west of Countryside Subdivision connecting to the waterline in Majestic Street shall reimburse DEVELOPER for the full amount of the waterline cost attributed to Area 3S, in the amount of \$11,337.

C. Warranty period and required surety, and reimbursements by TOWN to DEVELOPER

1. DEVELOPER shall not be required to provide a letter of credit to the TOWN as surety for the warranty of public improvements. However, the amounts that are to be reimbursed by the TOWN to DEVELOPER shall be held as surety and warranty against defects in the construction of the public improvements.
2. The DEVELOPER shall warrant all public improvements for a period of one year from the date that this agreement is executed, after which DEVELOPER shall request that the TOWN conduct an inspection for final acceptance of public improvements.

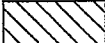
The total amount of reimbursement for all public improvements and for all areas associated with the Rocky Mountain Christian Church, to be reimbursed by the

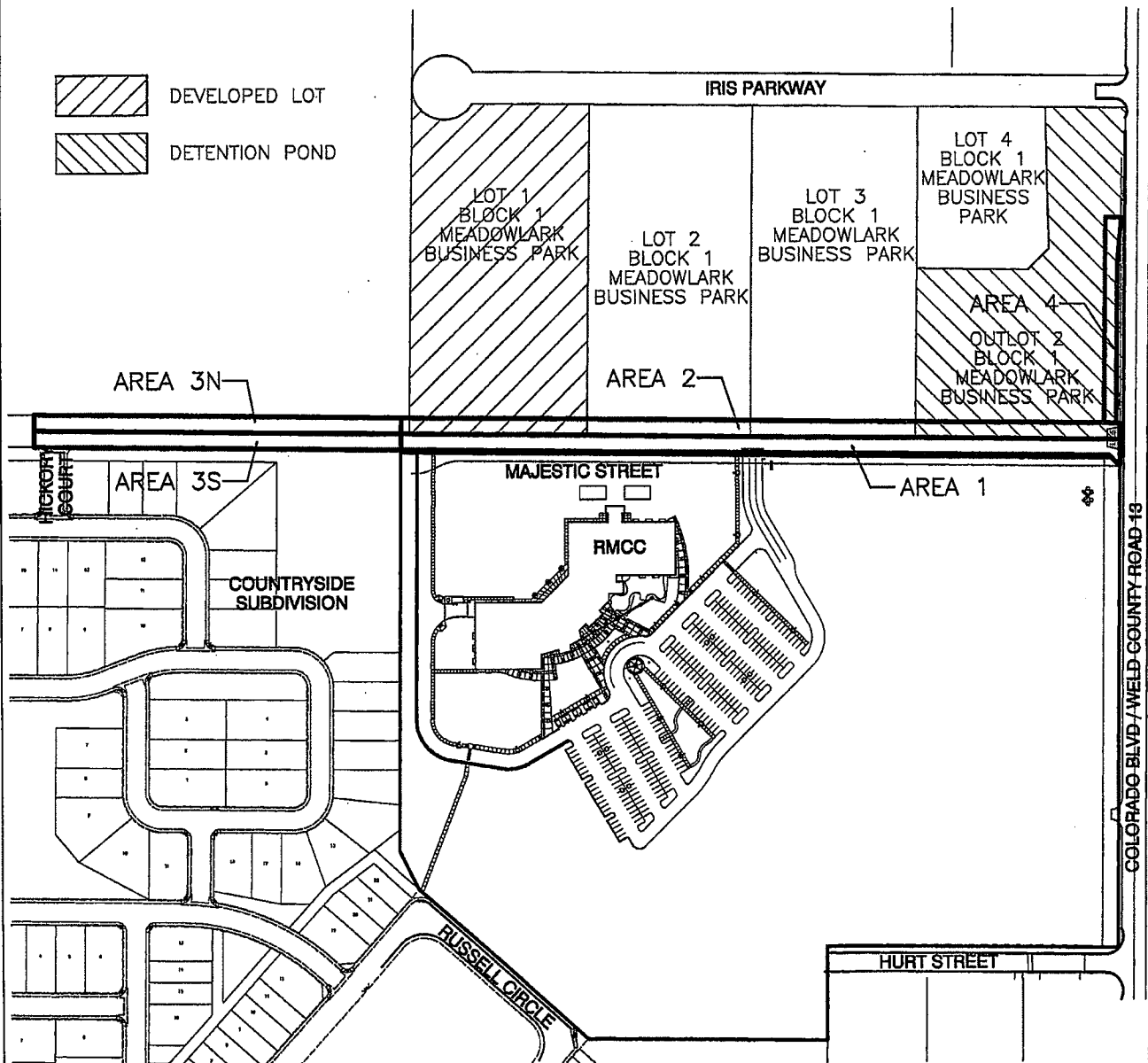
TOWN to the DEVELOPER shall be \$112,597. The TOWN and the DEVELOPER agree that this amount satisfies any and all reimbursement obligations that the TOWN has to the DEVELOPER in association with this development. The Town shall make annual payments to the DEVELOPER beginning with the first payment being made 30 days after the mutual execution of this agreement, and with the final payment being made three years after the first, subject to appropriations by the future Board of Trustees. All four payments shall individually be in the amount of \$28,149.25, and collectively shall amount to \$112,597.

D. Cost increases for future reimbursements from future developers

1. DEVELOPER and TOWN agree that reimbursements that the TOWN shall require future developers to pay to DEVELOPER, shall be increased due to inflationary cost increases. Reimbursements from future developers shall be adjusted using the Engineering New Record Construction Cost Index by multiplying the amount of the reimbursement described in this agreement by the ratio of the ENR Construction Cost Index at the time of reimbursement occurs to the index at the time that this agreement has been mutually executed by the TOWN and DEVELOPER.

EXHIBIT F-1

-  DEVELOPED LOT
-  DETENTION POND



1" = 300'

0 150 300
DATE PREPARED: JULY 16, 2008

1 of 1

TJB Consulting Group, LLC
2802 Clover Basin Drive, Suite 28 P.O. Box 1348
Longmont, CO 80502 303.532.2288
toddb@dgmlc.com fax: 303.702.0585

Civil Engineering Site Design Project Coordination